

Exhibit 34

From: Cindy Cohn <cindy@eff.org>
To: "Jeffrey S. Jacobson" <jsjacobson@debevoise.com>, "Jeffrey P. Cunard" <jpcunard@debevoise.com>
Date: 2/3/2006 7:02:49 PM
Subject: [SonyDRM-priv] Delegation agreement discussions

Hi Jeff and Jeff,

As Jeff J and I discussed on the phone, here is some of the correspondence between the Elizabeth Pritzker and me about the delegation. This is on top of, and supports, several telephone conversations where Elizabeth gave me her word that EFF was the delegated entity for purposes of the provisions in the settlement agreement where plaintiffs are to do ongoing monitoring. As you can see at no time does she indicate that she does not believe that EFF is the delegatee and in the January 12 message she affirmatively promises a "letter agreement."

REDACTED

As you know, our position is that Class Counsel delegated EFF for these purposes at the meeting on December 12, in your presence, or at least in one of the subsequent telephone calls where Elizabeth gave me her word about this, and that these emails represent our attempts to reduce that delegation to a writing. There has never been any indication that further negotiation is necessary, or that the delegation is anything less than complete and final. I will also note that we relied on the delegation in signing the Settlement Agreement in the first place, and in continuing our discussions with Sony, including the trip Kurt and I took to New York to meet with you and Jeff Cunard. Elizabeth was well aware of this, as you can see below, and took no steps to prevent us from relying on the delegation. I also note that the Settlement Agreement at II.I. does not require that the delegation be done in writing.

I've tried to give you the key portions of the correspondence as I can without implicating things that are not appropriately shared with opposing counsel. The messages are in chronological order, and there are some later ones by me to Elizabeth and Aaron, to which I received no reply, that I have not included, and possibly some others as well that I've missed in my quick review, but nothing that contradicts our position.

I understand the concern that Jeff Cunard raised with me that the parties need to get clarity about the delegation going forward. Given that there are both immediate issues, such as the various items to be launched on February 15, as well as ongoing issues where delegation is important, I do think we do need to address this issue right away. We may have to resort to the court, but I hope not, and I would appreciate your assistance here. I don't think it will serve any of us in the long run for the court to be drawn in to additional problems with this case and the settlement agreement, even if those problems do not directly implicate Sony.

I hope you are able to have a good weekend sans Blackberry.

Cindy

Begin forwarded message:

> From: "Elizabeth C. Pritzker" <ecp@girardgibbs.com>
> Date: December 28, 2005 4:46:48 PM PST
> To: "'cindy@eff.org'" <cindy@eff.org>
> Cc: "Jenelle Welling (jww@classcounsel.com)" <jww@classcounsel.com>
> Subject: FW: Unfinished Settlement Matters
>
> Cindy:

Redacted.

> First, although you have told me that my word is "gold" in our
> informal discussions about designation of future monitoring
> functions to EFF, . [redacted]. . : I do feel that I have done my
> best, both professionally and personally, to honor my commitments
> to you throughout the litigation.

January 3:

Begin forwarded message:

> From: Cindy Cohn <cindy@eff.org>
> Date: January 3, 2006 7:28:10 PM PST
> To: Elizabeth Pritzker <ecp@girardgibbs.com>
> Subject: [SonyDRM-priv] Fwd: delegation agreement
>
> Hi Elizabeth,
>
> I hope you had a happy new year and got at least a little rest. I
> managed to, but not until the very end of the holiday week.
>
> I know things have been hectic for you, so I drafted a delegation
> agreement from Class Counsel to EFF that I think is consistent with
> our discussions.
>
> We're hoping to have significant discussions with Sony this week
> about the notice,
> [redacted]
> so I think that getting the formal delegation to EFF done will help
> avoid confusion in the discussions and hopefully make things move
> more quickly.
>
>
> *****
> Cindy Cohn ----- Cindy@eff.org
> Legal Director ----- www.eff.org
> Electronic Frontier Foundation
> 454 Shotwell Street
> San Francisco, CA 94110
> (415) 436-9333 x108
> (415) 436-9993 (fax)

Another reminder:

>
> -----Original Message-----
> From: Cindy Cohn [mailto:cindy@eff.org]
> Sent: Wednesday, January 04, 2006 1:31 PM

REDACTED

> To: Elizabeth Pritzker
> Subject: talking with Sony about notice on Friday
>
>
> Hi Elizabeth,
>
> We'll be sitting down with Sony BMG on Friday morning in New York
> before the hearing to discuss what the banners, landing page, non-
> legal notices should look like.

[redacted]

>
>
> Are you coming to the hearing? Do you want to join us? I think we
> should have the designation agreement in place before then.
>

[redacted]

> Cindy
> *****
> Cindy Cohn ---- Cindy@eff.org
> Legal Director ---- www.eff.org
> Electronic Frontier Foundation
> 454 Shotwell Street
> San Francisco, CA 94110
> (415) 436-9333 x108
> (415) 436-9993 (fax)
>
>

Response:

Begin forwarded message:

> From: "Elizabeth C. Pritzker" <ecp@girardgibbs.com>
> Date: January 4, 2006 5:40:17 PM PST
> To: 'Cindy Cohn' <cindy@eff.org>
> Subject: RE: talking with Sony about notice on Friday
>
> Cindy -- Have been focusing on preliminary approval and my other
> filing.
>
> I will get you something on the designation agreement early next
> week (better that this occurs after preliminary approval: if for
> some reason the court does not grant preliminary approval of the
> settlement, there won't be much use for a designation agreement).
>

> [redacted]
>

> Elizabeth C. Pritzker
> Girard Gibbs & De Bartolomeo LLP
> 601 California Street, Suite 1400
> San Francisco, CA 94108
> Phone: (415) 981-4800
> Fax: (415) 981-4846
> ecp@girardgibbs.com
> www.girardgibbs.com
>

> This message is intended only for the addressee, and may contain
> information that is privileged or confidential, and exempt from

REDACTED

> disclosure under applicable law. If you are not the intended
> recipient or agent of the intended recipient, you are hereby
> notified that any dissemination, distribution or copying of this
> communication is strictly prohibited; and you are asked to notify
> us immediately by return email, or by telephone at (415) 981-4800.
> Thank you.

Another attempt:

> -----Original Message-----

> From: Cindy Cohn [mailto:cindy@eff.org]

> Sent: Thursday, January 12, 2006 11:38 AM

> To: Elizabeth Pritzker

> Subject: delegation agreement

>

> Hi Elizabeth,

>

> Can we get this finalized now?

>

> Thanks,

>

> Cindy

>

>

>

>

> *****

> Cindy Cohn

---- Cindy@eff.org

> Legal Director

---- www.eff.org

> Electronic Frontier Foundation

> 454 Shotwell Street

> San Francisco, CA 94110

> (415) 436-9333 x108

> (415) 436-9993 (fax)

Begin forwarded message:

> From: "Elizabeth C. Pritzker" <ecp@girardgibbs.com>

> Date: January 12, 2006 5:17:26 PM PST

> To: 'Cindy Cohn' <cindy@eff.org>

> Cc: "Elizabeth C. Pritzker" <ecp@girardgibbs.com>

> Subject: RE: delegation agreement

>

> Just back in town from a trip/oral argument in Tennessee. I have a
> day-long partnership meeting tomorrow, but will get you a letter
> agreement over the weekend, or by Monday at the latest. Thanks for
> your patience.

>

> Best,

>

> Elizabeth C. Pritzker

> Girard Gibbs & De Bartolomeo LLP

> 601 California Street, Suite 1400

> San Francisco, CA 94108

> Phone: (415) 981-4800

> Fax: (415) 981-4846

> ecp@girardgibbs.com

> www.girardgibbs.com

REDACTED

>

> This message is intended only for the addressee, and may contain
> information that is privileged or confidential, and exempt from
> disclosure under applicable law. If you are not the intended
> recipient or agent of the intended recipient, you are hereby
> notified that any dissemination, distribution or copying of this
> communication is strictly prohibited; and you are asked to notify
> us immediately by return email, or by telephone at (415) 981-4800.
> Thank you.

REDACTED

SonyDRM-priv mailing list

SonyDRM-priv@eff.org

<https://falcon.eff.org/mailman/listinfo/sonydrm-priv>